

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

RICKY LEE NELSON v. STATE OF TENNESSEE

Appeal from the Circuit Court for Johnson County
No. X3038 Thomas J. Seeley, Judge

No. E2008-00068-CCA-R3-HC - Filed May 29, 2008

The pro se petitioner, Ricky Lee Nelson, appeals the Johnson County Circuit Court's summary dismissal of his petition for a writ of habeas corpus. The state has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Following our review, we conclude that the state's motion is well-taken, and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, J.J., joined.

Ricky Lee Nelson, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Lacy Elaine Wilber, Assistant Attorney General, attorneys for appellee, State of Tennessee.

MEMORANDUM OPINION

The petitioner was convicted after a jury trial in Shelby County of robbery with a deadly weapon, second degree burglary, and aggravated rape. The trial court imposed an effective sentence of thirty-five years for these convictions on September 21, 1990. The record reflects that the petitioner filed a "Petition For Writ of Certiorari" on September 27, 2007, alleging that his judgments were illegal and void because they were imposed in violation of his Sixth Amendment right to a jury determination beyond a reasonable doubt of all facts supporting his punishment. The trial court, treating the petition as one for a writ of habeas corpus, summarily dismissed the petition for failure to state a cognizable claim. The petitioner now appeals, and the state has filed a motion asking this court to affirm the judgment of the habeas corpus court pursuant to Rule 20 of the Rules of the Court of Criminal Appeals.

Tennessee law provides that "[a]ny person imprisoned or restrained of his liberty under any

pretense whatsoever . . . may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment.” Tenn. Code Ann. § 29-21-101. Habeas corpus relief is limited and available only when it appears on the face of the judgment or the record of proceedings below that a trial court was without jurisdiction to convict the petitioner or that the petitioner’s sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). To prevail on a petition for a writ of habeas corpus, a petitioner must establish by a preponderance of the evidence that a judgment is void or that a term of imprisonment has expired. See State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). If a petition fails to state a cognizable claim, it may be dismissed summarily by the trial court without further inquiry. See State ex rel. Byrd v. Bomar, 214 Tenn. 476, 483, 381 S.W.2d 280, 283 (1964); Tenn. Code Ann. § 29-21-109. We note that the determination of whether to grant habeas corpus relief is a matter of law; therefore, we will review the habeas corpus court’s finding de novo without a presumption of correctness. Smith v. Lewis, 202 S.W.3d 124, 127 (Tenn. 2006).

On appeal, the petitioner makes various allegations regarding the trial court’s abuse of discretion in summarily dismissing what he contends is a properly filed petition for writ of certiorari. We note that the petition cites to the habeas corpus statute and specifically states that the petitioner is entitled to relief from his alleged illegal sentences. It is well settled that a trial court is not bound by the title of the pleading, but has the discretion to treat the pleading according to the relief sought. Fallin v. Knox County Board of Commissioners, 656 S.W.2d 338, 342 (Tenn. 1983); State v. Minimum Salary Dep’t. of A.M.E. Church, 477 S.W.2d 11, 12 (Tenn. 1972). Additionally, we note that the petitioner now refers to the pleading as a petition for a writ of habeas corpus in his responsive pleading to the state’s appropriately filed Motion for Affirmance Under Rule 20 of this court’s rules. Therefore, we conclude that the trial court properly treated the pleading as a petition for a writ of habeas corpus.

The substantive allegation of the petition is that the petitioner’s sentences are void because they were imposed in contravention to the United State Supreme Court’s holding in Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004). This court has consistently held that Blakely challenges are not cognizable in collateral proceedings. Rodney Campbell v. James Fortner, Warden, M2007-01640-CCA-R3-HC, 2008 WL 1850802, at *1 (Tenn. Crim. App. Apr. 25, 2008); see also Billy Merle Meeks v. Ricky J. Bell, Warden, No. M2005-00626-CCA-R3 -HC, 2007 WL 4116486, at *12 (Tenn. Crim. App. Nov. 13, 2007), perm. app. denied (Tenn. Apr. 7, 2008). Therefore, we conclude that the habeas court properly dismissed the petition for a writ of habeas corpus. Having discerned no error of law requiring reversal of the judgment of the habeas corpus court, we conclude that the state’s motion for an affirmance pursuant to Rule 20 of the Court of Criminal Appeals is granted.

For the reasons stated, the judgment of the habeas corpus court is affirmed in accordance with Rule 20 of the Rules of the Court of Criminal Appeals.

D. KELLY THOMAS, JR., JUDGE